

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
)
HAMSHIRE FANNETT HIGH SCHOOL)
)
Petition for Reconsideration and Reinstatement)
and Waiver Request for Educational Broadband)
Service Station WNC427)
)
FOLKSTON MIDDLE SCHOOL)
)
Petition for Reconsideration and Reinstatement)
and Waiver Request for Educational Broadband)
Service Station WLX632)
)
LOUSIANA STATE UNIVERSITY AND)
MECHANICAL & AGRICULTURAL)
COLLEGE)
)
Petition for Reconsideration and Reinstatement)
and Waiver Request for Educational Broadband)
Service Station WLX971)
)
AUTAUGA COUNTY PUBLIC SCHOOL)
SYSTEM)
)
Petition for Reconsideration and Reinstatement)
and Waiver Request for Educational Broadband)
Service Station WNC219)
)
ROTAN INDEPENDENT SCHOOL DISTRICT)
)
Petition for Reconsideration and for Waiver of)
Deadline Permitting Late-Filed Application for)
Renewal for Educational Broadband Service)
Station WNC253)
)
CHIPPEWA VALLEY TECHNICAL COLLEGE)
)
Petition for Reconsideration and Reinstatement)
and Waiver Request for Educational Broadband)
Service Stations WLX260, WLX268 and)
WLX310)

ROBY CONSOLIDATED INDEPENDENT)
 SCHOOL DISTRICT)
)
 Petition for Reconsideration and Reinstatement)
 and Waiver Request for Educational Broadband)
 Service Station WNC336)
)
 PALMER SCHOOL DISTRICT #49)
)
 Petition for Reconsideration and Reinstatement)
 and Waiver Request for Educational Broadband)
 Service Station WNC481)

ORDER ON RECONSIDERATION

Adopted: June 15, 2009

Released: June 16, 2009

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us the above-captioned petitions for reconsideration¹ of letters² terminating the above-referenced Educational Broadband Service (EBS) licenses for failure to renew their licenses and for failure to meet their construction deadline. Sprint Nextel Corporation (Sprint Nextel) opposed all of the Petitions.³ We also have replies filed by Hamshire Fannett High School (HFHS),⁴ Folkston Middle

¹ Petition for Reconsideration and Reinstatement and Waiver Request, Hamshire Fannett High School (filed Nov. 17, 2007) (HFHS Petition); Petition for Reconsideration and Reinstatement and Waiver Request, Folkston Middle School (filed Nov. 17, 2007) (Folkston Petition); Petition for Reconsideration and Reinstatement and Waiver Request, Louisiana State University and Mechanical and Agricultural College (filed Nov. 17, 2007) (LA State Petition); Petition for Reconsideration and Reinstatement and Waiver Request, Autauga County Public School System (filed Nov. 16, 2007) (Autauga Petition); Petition for Reconsideration and for Waiver of Deadline Permitting Late-Filed Application for Renewal, Rotan Independent School District (filed Nov. 16, 2007) (Rotan Petition); Petition for Reconsideration and Reinstatement and Waiver Request, Chippewa Valley Technical College (filed Nov. 16, 2007) (Chippewa Petition); Petition for Reconsideration and Reinstatement and Waiver Request, Roby Consolidated Independent School District (filed Nov. 14, 2007) (Roby Petition); Petition for Reconsideration and Reinstatement and Waiver Request, Palmer School District #49 (filed Nov. 14, 2007) (Palmer Petition) (collectively, Petitions).

² Letter from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau to Hamshire Fannett High School (Oct. 19, 2007); Letter from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau to Folkston Middle School (Oct. 19, 2007); Letter from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau to LA State Univ and Mech & Agric College (Oct. 19, 2007); Letter from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau to Autauga County Public School System (Oct. 19, 2007); Letter from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau to Rotan Independent School District (Oct. 19, 2007); Letters from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau to Chippewa Valley Technical College (Oct. 19, 2007); Letter from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau to Roby Consolidated Independent School District (Oct. 19, 2007); Letter from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau to Palmer School District #49 (Oct. 19, 2007) (Termination Letters).

³ Opposition of Sprint Nextel Corporation (Nov. 21, 2007) (Sprint Opposition).

School (Folkston)⁵ and LA State University and Mechanical & Agricultural College (LA State).⁶ Except for Rotan, Petitioners have also manually filed late-filed renewal and extension applications⁷ with requests for waiver of Sections 1.949(a) and 1.946(e) of the Commission's Rules⁸ to permit their late-filed renewal and extension applications to be accepted and processed. For the reasons stated below, we deny the Petitions and dismiss with prejudice the Applications.

II. BACKGROUND

2. Under the rules in effect prior to 2003, EBS permittees had eighteen months from the date of the issuance of the original authorization to construct their facilities.⁹ The Commission granted applications for extension of time to construct EBS stations upon a specific and detailed narrative showing that the failure to complete construction was due to causes that were beyond the permittee's control, or upon a specific and detailed showing of other sufficient justification for an extension.¹⁰ Applications for extension of time to construct were ordinarily required to have been filed at least 30 days prior to the construction deadline.¹¹ In those cases where a station is not constructed by the deadline specified in the permit or as extended by the Commission, the rules required the Commission to declare the permit forfeited and make a notation of such forfeiture.¹²

3. On April 2, 2003, the Commission released a *Notice of Proposed Rule Making (NPRM)* in this proceeding, seeking comment on an industry proposal as well as other potential alternatives for restructuring the 2500-2690 MHz band.¹³ In addition to the Coalition's proposal, the Commission also sought comment on ownership and eligibility issues, transition timetables, and additional engineering issues. In light of the fundamental rule changes proposed, the Commission suspended the construction deadline for EBS licensees "that have unexpired licenses or permits that have not expired as of [April 2, 2003] and that have made a timely filed extension request."¹⁴ None of the stations referenced in this *Order*

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⁴ Reply to Opposition of Hamshire Fannett High School (filed Nov. 30, 2007).

⁵ Reply to Opposition of Folkston Middle School (filed Nov. 30, 2007).

⁶ Reply to Opposition of LA State Univ and Mech & Agric College (filed Nov. 30, 2007).

⁷ See HFHS Petition at Exhibits B and C; Folkston Petition at Exhibits B and C; LA State Petition at Exhibits B and C; Autauga Petition at Exhibit A; Chippewa Petition at Exhibit B; Roby Petition at Exhibit A; Palmer Petition at Exhibit A (collectively, Applications).

⁸ 47 C.F.R. §§ 1.949(a), 1.946(e).

⁹ 47 C.F.R. § 73.3534(a) (2002).

¹⁰ 47 C.F.R. § 73.3534(c) (2002).

¹¹ 47 C.F.R. § 73.3534(b) (2002).

¹² 47 C.F.R. § 73.3599 (2002).

¹³ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; WT Docket Nos. 03-66, 03-67, 02-68, MM Docket No. 97-217, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 18 FCC Rcd 6722 (2003) (*BRS/EBS NPRM*).

¹⁴ *BRS/EBS NPRM*, 18 FCC Rcd at 6805 ¶ 201.

on *Reconsideration* were ever constructed and none of the Petitioners filed timely requests for extension of time to construct. As a result, in 2007, WTB issued letters terminating all of the above-captioned licenses.¹⁵

4. Once the Petitioners received notice of termination of the licenses, each of the licensees filed petitions for reconsideration along with late-filed applications for renewal of license and extension of time to construct.¹⁶ In connection with the applications, Petitioners sought waiver of Sections 1.949(a)¹⁷ of the Commission's Rules, which requires licensees to file their renewal applications no later than the expiration date of the license and Section 1.946(e),¹⁸ which requires that extension applications be filed prior to the construction deadline. The Petitioners generally indicated that they failed to file timely extension requests and/or renewal applications because of changes in personnel and lack of familiarity with the Commission's rules,¹⁹ or reliance upon lessees that filed for bankruptcy and went out of business.²⁰

5. Sprint Nextel filed an Opposition against the above-captioned Petitions.²¹ Sprint Nextel claims that the licenses at issue were terminated years ago when the licensees failed to comply with their construction obligations and any applications to renew the licenses are subject to the notice requirements in the Administrative Procedure Act and Section 309(j) of the Communications Act of 1934, as amended, the standards established for late-filed renewals applicable to EBS, and the Commission's freeze on applications for new EBS stations.²²

III. DISCUSSION

6. We note, as an initial matter, that Petitioners do not challenge the Bureau's finding that, at the time the Termination Letters were issued, the Petitioners had not made filings with the Bureau asserting compliance with the Commission's construction and renewal requirements or seeking extensions thereof.²³

¹⁵ See Termination Letters. The Termination Letters also noted that the licenses for the stations in question had expired and that the licensees had failed to file an application for renewal of license. *Id.* Because the failure to meet the construction deadline provides an independent basis for terminating the licenses, we will not discuss the failure to renew the licenses further, except as noted below with respect to Station WLX310.

¹⁶ See Applications.

¹⁷ 47 C.F.R. § 1.949(a).

¹⁸ 47 C.F.R. § 1.946(e).

¹⁹ See HFHS Petition at 1-2; Folkston Petition at 1-2; LA State Petition at 1-2; Autauga Petition at 2; Rotan Petition at 1; Chippewa Petition at 3; Roby Petition at 2; Palmer Petition at 2.

²⁰ See HFHS Petition at 1-2; Folkston Petition at 1-2; LA State Petition at 1-2; Autauga Petition at 2; Chippewa Petition at 3; Roby Petition at 2; Palmer Petition at 2.

²¹ See Sprint Opposition.

²² *Id.*

²³ We note that Chippewa provides a letter purporting to report that Station WLX310 had been constructed. Chippewa Petition at 4, Exhibit B. Chippewa does not provide evidence that the certification was ever filed with the Commission and, even assuming the certification was filed, the license for Station WLX310 was still subject to termination for failure to renew the license. The license expired on August 5, 2000. Under former Section 74.15(e) of the Commission's Rules, which was in effect until January 10, 2005, renewal applications for the Instructional Television Fixed Service (ITFS), the predecessor-in-interest to EBS, were due the first day of the fourth full calendar month prior to license expiration. 47 C.F.R. § 74.15(e). Chippewa does not allege that it ever filed an application for renewal of license. The license for Station WLX310 was subject to termination for failure to renew

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Rather, Petitioners contend that we should reinstate their licenses due to changed circumstances. Specifically, Petitioners assert that the EBS industry was in a state of flux because the Commission was considering a number of possible alternatives to the spectrum and a number of former operators had filed for bankruptcy protection.²⁴ The Petitioners claim that these circumstances and the fact that the Commission eventually adopted new rules for the spectrum constitute new circumstances warranting reconsideration.²⁵ We disagree.

7. Section 1.106(c) of the Commission's Rules provides that we will accept a petition for reconsideration relying on facts not previously presented to the Commission only in one of three scenarios: (1) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters;²⁶ (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity;²⁷ or (3) the designated authority determines that consideration of the facts relied on is required in the public interest.²⁸ The circumstances Petitioners cite – an ongoing rulemaking proceeding and existing bankruptcy filings by certain former operators²⁹ – are not circumstances that have changed or circumstances that could not have been learned by the Petitioners since the issuance of the Termination letters. Moreover, such circumstances have no relationship to the continuing requirement to file timely construction extensions and/or renewal applications. Under those circumstances, we conclude that the first two scenarios noted above do not apply because Petitioners could have made such arguments prior to the issuance of the Termination Letters.

8. We also find that reconsideration would not be in the public interest. The Commission has noted: “Strict adherence to the principle of administrative finality in licensing matters advances the public interest. This policy promotes the prompt initiation of service without undue delay.”³⁰ Absent a showing

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the authorization. *See* 47 C.F.R. § 1.955(a)(1). Accordingly, we deny the Chippewa Petition with respect to Station WLX310 because the license expired in 2000.

²⁴ *See* HFHS Petition at 2; Folkston Petition at 2; LA State Petition at 2-3; Autauga Petition at 3-4; Rotan Petition at 1-2; Chippewa Petition at 5; Roby Petition at 3; Palmer Petition at 3-4.

²⁵ *See* HFHS Petition at 2; Folkston Petition at 2; LA State Petition at 2-3; Autauga Petition at 3-4; Rotan Petition at 1-2; Chippewa Petition at 5; Roby Petition at 3; Palmer Petition at 3-4.

²⁶ 47 C.F.R. § 1.106(c)(1)(i).

²⁷ 47 C.F.R. § 1.106(c)(1)(ii).

²⁸ 47 C.F.R. § 1.106(c)(2).

²⁹ The bankruptcies cited by Petitioners occurred several years ago, and the rule changes made by the Commission primarily occurred in 2004 and 2006. *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; WT Docket Nos. 03-66, 03-67, 02-68, MM Docket No. 97-217, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004); *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21 FCC Rcd 5606 (2006).

³⁰ *See* Crystal Broadcast Partners, Assignor and Thomas E. Ingstad Broadcasting, Inc., Assignee, *Memorandum Opinion and Order*, 11 FCC Rcd 4680 ¶ 6 (1996).

of Commission error in terminating the licenses, we believe that reinstating these licenses would be inconsistent with the principle of administrative finality and could cause undue disruption to other licensees in the band. If we reinstated these licenses when no good cause has been shown for reinstatement, we could cause uncertainty concerning the status of other terminated licenses. Such uncertainty could hinder the plans of active licensees to provide service. In the absence of any demonstration of Commission error, we conclude that the public interest in administrative finality outweighs the licensees' private interest in having their licenses reactivated.

9. We will dismiss the Applications submitted with the Petitions. Petitioners have no licenses to renew or to seek construction extensions on. Accordingly, we dismiss with prejudice the applications filed by the various Petitioners.

IV. CONCLUSION AND ORDERING CLAUSES

10. For the reasons discussed above, we deny the Petitions and reaffirm the termination of the licenses in question. We also dismiss with prejudice the applications filed by Petitioners.

11. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 0.331 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.106, that the petitions for reconsideration filed by Hamshire Fannett High School on November 16, 2007, by Folkston Middle School on November 16, 2007, by Louisiana State University and Mechanical and Agricultural College on November 16, 2007, by Autauga County Public School System on November 16, 2007, by Rotan Independent School District on November 16, 2007, by Chippewa Valley Technical College on November 16, 2007, by Roby Consolidated Independent School District on November 14, 2007, and by Palmer School District #49 on November 14, 2007 ARE DENIED.

12. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 309, and Section 1.934(f) of the Commission's Rules, 47 C.F.R. § 1.934(f), that the applications attached to the petitions for reconsideration ARE DISMISSED WITH PREJUDICE.

13. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Blaise A. Scinto
Chief, Broadband Division
Wireless Telecommunications Bureau